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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,567	01/15/2004	Susumu Kobayashi	NPR-136	4523
20374	7590	04/14/2006	EXAMINER	
KUBOVCIK & KUBOVCIK SUITE 710 900 17TH STREET NW WASHINGTON, DC 20006			GIBSON, KESHIA L	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 04/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/757,567

Applicant(s)

KOBAYASHI ET AL.

Examiner

Keshia Gibson

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4,9,10 and 12-23 is/are pending in the application.
- 4a) Of the above claim(s) 10,12-20 and 22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,9,21 and 23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-4,9-10,12-23 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 January 2004 and 30 January 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____  | 6) <input type="checkbox"/> Other: ____                                     |

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments, see page 17, filed 1/30/06, with respect to the rejection(s) of previous claim(s) 1, 9, 23, 5 and 11 (current claims 1, 9, and 23) under 35 USC 102 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Ross in view of Kayser, below.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 1-4, 9, 21, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ross (US 3,885,567) in view of Kayser (US 5,419,768).

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In regard to Claims 1, 9, and 23, Ross discloses a medical aspirator comprising an aspiration port, a positive displacement (reciprocating) electric pump, a ventilation path, and a release valve for modifying pressure (whole document). Ross further discloses that positive pressure is exhausted to the atmosphere (column 5, lines 23-25), and is therefore considered to implicitly disclose an exhaust port. The pressure gauges, sensors, and alarms are considered to provide a clogging detection means (column 2, lines 5-44; column 3, lines 1-45). Ross does not expressly disclose that the release valve is adapted to open and close simultaneously with the stopping and starting of the electric pump so as to obtain atmospheric pressure within the system. Kayser discloses a vacuum regulator for an aspirator and further discloses providing electronic controls for the valves so that they automatically vent the aspirator to the atmosphere so as to reduce vacuum surge trauma and load on the system (whole document, especially abstract, column 1, line 37-column 2, line 58). One of ordinary skill in the art would have been motivated to modify the aspirator of Ross to have the release valve open and close simultaneously with the stopping and starting of the electric pump so as to obtain atmospheric pressure within the system, as taught by Kayser, since doing so would reduce vacuum surge trauma and load on the system. Thus, it would have been obvious to one of ordinary skill in the art to modify modify the aspirator of Ross to have the release valve open and close simultaneously with the stopping and starting of the electric pump so as to obtain atmospheric pressure within the system, as taught by Kayser, since doing so would reduce vacuum surge trauma and load on the system.

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In regard to Claims 2-4, Ross discloses a reciprocating pump and suitable valves, but does not expressly disclose the use of a diaphragm pump or an electromagnetic valve. However, the use of such pumps and valves for vacuum suction devices is known in the art (as supported by US 4147478, US 4188196, and US 4548550). Thus, it would have been obvious to one of ordinary skill in the art to select a diaphragm pump or electromagnetic valve, since it has been held within the skill of a worker of ordinary skill in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416.

In regard to Claim 21, Ross discloses providing the aspirator with a source of power, and further provides a standard outlet as an example; however, Ross does not expressly disclose that the aspirator further comprises a [battery] cell. Nevertheless, it would have been obvious to one of ordinary skill in the art to provide the aspirator with a battery cell since batteries and standard electric outlets are art recognized equivalents for their use as sources of power (as supported by US 3599639 and US 5933703) and the selection of any of these known equivalents to serve as a power source would be within the level of ordinary skill in the art.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keshia Gibson whose telephone number is (571) 272-7136. The examiner can normally be reached on M-F 8:30 a.m. - 6 p.m., out every other Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Keshia Gibson  
Examiner  
Art Unit 3761

klg 4/11/06

**TATYANA ZALUKAEVA**  
**SUPERVISORY PRIMARY EXAMINER**

